

NEW SECTION

WAC 314-12-027 Financial interest and ownership. Pursuant to the exceptions in chapter 66.28 RCW:

(1) An industry member or affiliate may have a financial interest in another industry member or a retailer, and a retailer or affiliate may have financial interest in an industry member unless such interest has resulted or is more likely than not to result in:

(a) Undue influence over the retailer or the industry member; or

(b) An adverse impact on public health and safety.

(2) The structure of any such financial interest must be consistent with the following:

(a) An industry member in whose name a license or COA has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but the industry member must form a separate legal entity to apply for the retail liquor license.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a retail restaurant. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole proprietor, could purchase any amount of stock in a retail restaurant;

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in manufacturer, importer, or distributor licensed under RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but the retailer must form a separate legal entity to apply for the nonretail liquor license.

Example: Joe and Jane Smith own a grocery store and hold a grocery store liquor license under a sole proprietor legal entity. They want to purchase stock in a local winery. Joe and Jane Smith are not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, Joe and Jane Smith must form a separate legal entity (such as a corporation or limited liability company) to purchase the stock in the winery;

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a distributor. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole-proprietor, could purchase any amount of stock in a distributor;

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

Example: B&W Distributing, LLC is the liquor licensee for BW Distributing. B&W Distributing, LLC wants to purchase stock in ABC Winery. B&W Distributing, LLC is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, B&W Distributing, LLC must form a separate legal entity to purchase the stock in the winery.

(3) Any person may request a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety by filing a complaint or request for determination with the board.

(a) The board may conduct an investigation as it deems appropriate in the circumstances.

(b) If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or an adverse impact on public health or safety, the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, the retailer, or both.

The recipient of the administrative violation notice or notice of intent to deny the license may request an administrative hearing under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-12-140 Prohibited practices--Contracts--Gifts--Rebates, etc. (1) ~~No ((contract shall be made or entered into whereby any retail licensee agrees to handle any particular brand or brands of liquor to the exclusion of any other brand or brands of liquor.~~

~~(2) No contract shall be made or entered into for the future~~

~~delivery of liquor to any retail licensee: Provided, That))~~
industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

~~((+3))~~ (2) No ((manufacturer, distributor, or importer, or his employee,)) industry member shall ((directly or indirectly solicit, give or offer to, or receive from any retail licensee, any employee thereof, or an applicant for a license, any)) advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

(a) Gifts((+)) ;

(b) Discounts((+)) ;

(c) Loans of money((+)) ;

(d) Premiums((+)) ;

(e) Rebates((+)) ;

(f) Free liquor of any kind((+)) ; or

(g) Treats or services of any nature whatsoever((+ nor shall any retail licensee, employee thereof, or an applicant for a license, directly or indirectly, solicit, receive from, or give or offer to any manufacturer, distributor or importer, or his employee, any gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature whatsoever,)) except such services as are authorized in this regulation.

~~((+4))~~ (3) Pursuant to RCW 66.28.010 ((a manufacturer, distributor, importer,)) an industry member or ((his)) licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of ((his)) its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of ((his)) its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of ((his)) its products in such a manner as to cover up, hide or reduce the space of display of the products of any other ((manufacturer, distributor or importer, Provided, however, manufacturers, distributors, importers)) industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when ((reasonable)) a two-day notice is given to other interested ((manufacturers, distributors)) industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

~~((+5))~~ (d) Provide price cards and may also price goods of ((his)) its own brands in accordance with the usual and common

business practice and which are otherwise in compliance with the regulations.

((+c)) (e) Provide point of sale advertising material and brand signs.

((+d)) (f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

((+e)) (g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

((+5)) (4) No ~~((manufacturer, distributor, importer,))~~ industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any ~~((retail licensee))~~ retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any ~~((manufacturer, distributor or importer))~~ industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

((+6)) (5) No ~~((manufacturer or distributor))~~ industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

((+7)) (6) In selling equipment, fixtures, supplies or commodities other than liquor, no ~~((manufacturer, distributor or importer))~~ industry member shall grant to ~~((retail licensees))~~ any retailer, nor shall such ~~((licensees))~~ retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the ~~((manufacturer's, importer's, or distributor's))~~ industry member's cost of acquisition. In no event shall credit be extended to any ~~((retail licensee))~~ retailer.

((+8)) (7) Any ~~((manufacturer, distributor or importer))~~ industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection ~~((in accordance with WAC 314-20-050)),~~ records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold((+)):

(b) The purchase price of each unit sold together with the total amount of the sale((+)):

(c) Transportation costs and services rendered in connection with the installation of such articles((+)): and

~~((Such invoice shall list))~~ (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection ~~((+5+))~~ (4) of this section.

~~((+9+))~~ (8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-12-141 Courses of instruction. ~~((Breweries, wineries and distributors))~~ Industry members conducting courses of instruction as authorized by RCW 66.28.150 may provide alcohol at no charge to licensees of the board, their employees, and invited guests who have a legitimate business interest in the manufacturing, importing, distributing and retailing of liquor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-12-135	Business entertainment--Records.
WAC 314-12-145	Credit on nonliquor food items--
	Conditions--Recordkeeping.